

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHRIS CUFFARO,

Plaintiff,

- against -

GOTTA HAVE IT! AUCTIONS, INC.

Defendant.

Docket No. 1:19-cv-00400

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Chris Cuffaro (“Cuffaro” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Gotta Have It! Auctions, Inc. (“Auctions” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of two copyrighted photographs of English singer and songwriter George Michael, owned and registered by Cuffaro, a professional music photographer. Accordingly, Cuffaro seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

## **PARTIES**

5. Cuffaro is a professional music photographer in the business of licensing and selling his photographs for a fee having a usual place of business at 449 ½ North Sycamore Avenue, Los Angeles, California 90036. Cuffaro's work has been shown in Exhibits around the world.

6. Upon information and belief, Auctions is a domestic business corporation duly organized and existing under the laws of the State of New York, with a place of business 153 East 57<sup>th</sup> Street, New York, New York 10022. Upon information and belief Auctions is registered with the New York Department of State Division of Corporations to do business in the State of New York. At all times material, hereto, Auctions has owned and operated a website at the URL: [www.GottaHaveRockandRoll.com](http://www.GottaHaveRockandRoll.com) (the "Website").

## **STATEMENT OF FACTS**

### **A. Background and Plaintiff's Ownership of the Photographs**

7. Cuffaro photographed English singer and songwriter George Michael (the "Photographs"). A true and correct copy of the Photographs are attached hereto as Exhibit A.

8. Cuffaro is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs was registered with the United States Copyright Office and was given registration number VA 2-132-301.

### **B. Defendant's Infringing Activities**

10. Auctions posted the Photographs on an auction for a George Michael Motorcycle Jacket with a minimum bid of \$20,000. See URL:

[https://www.gottahaverockandroll.com/George\\_Michael\\_\\_Faith\\_\\_Music\\_\\_Video\\_\\_Worn\\_\\_Sign](https://www.gottahaverockandroll.com/George_Michael__Faith__Music__Video__Worn__Sign)

ed\_lot24648.aspx. A true a correct copy of the Photographs on the Website and a screenshot of the Photographs on the Website are attached hereto as Exhibit B.

11. Auctions did not license the Photographs from Plaintiff for its Website, nor did Auctions have Plaintiff's permission or consent to publish the Photographs on its Website.

**FIRST CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
**(17 U.S.C. §§ 106, 501)**

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Auctions infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. Auctions is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

**SECOND CLAIM FOR RELIEF**  
**INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST**  
**DEFENDANT**  
**(17 .S.C. § 1202)**

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-18 above.

18. Upon information and belief, Auction intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

19. The conduct of Auction violates 17 U.S.C. § 1202(b).

20. Upon information and belief, Auction's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

21. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Auction intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph. Auction also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph.

22. As a result of the wrongful conduct of Auction as alleged herein, Plaintiff is entitled to recover from Auction the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Auction because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

23. Alternatively, Plaintiff may elect to recover from Auction statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Auctions be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Internet be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
  - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
6. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
7. That Plaintiff be awarded punitive damages for copyright infringement;
8. That Plaintiff be awarded attorney's fees and costs;
9. That Plaintiff be awarded pre-judgment interest; and
10. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
January 14, 2019

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